IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPLICATION NO.2721 OF 2004

Shri Karbhari Vishwanath Ushire, .. Applicant

vs

The State of Maharashtra, .. Respondent

Ms. Smita Mane i/b Mr P.B.Shah, for the applicant.

Mr R.Y.Mirza, APP for the respondent.

CORAM : D.B.BHOSALE,J.

DATE : 30th AUGUST, 2004.

PC:

1. Heard Ms. Mane, learned counsel for the applicant and Mr.Mirza, learned A.P.P for the respondent.

2. The applicant filed this application for being released on bail in C.R. No.I-23/2003 registered at Killa Police Station, Malegoan under sections 302, 324 read with section 34 of I.P.C and section 135 of the Bombay Police Act. The occurrence in the instant case took place on 11.4.2003 at 8 pm in which the applicant and three others are alleged to have committed murder of Prakash Ushire. Ms.Mane, learned counsel for the applicant, submitted that the role attributed to the applicant and the role played by the other accused and in particular co-accused-Vishvanath Pandurang Ushire is identical. According to all the eye-witnesses,

co-accused Vishwanath and the present applicant assaulted the deceased with the sharp cutting weapons and, therefore, the applicant is entitled for bail on parity. She further submitted that in any case, considering the location of the wounds suffered by the deceased, the applicant cannot be said to have had any intention to kill the deceased. Mr Mirza, learned APP, on the other hand, invited my attention to the statement of the complainant and submitted that the complainant did not attribute overtact to co-accused Vishvanath while specific overtact was attributed by him to the applicant and, therefore, he cannot claim parity.

3. I perused the FIR and the statements of the eye-witnesses, viz. Subhash, Vijay, Jyoti and Manda. It is true that the complainant did not attribute specific overtact to co-accused Vishvanath. However, all other eye-witnesses specifically assigned role to co-accused Vishvanath who, according to them, assaulted the deceased with razor. The post mortem report supports their statements. In so far as the statement of the complainant is concerned, though she attributed all the wounds, suffered by the deceased, to the present applicant, the other eye-witnesses attributed those wounds to co-accused Vishwanath also. Considering the overall facts and circumstances of the case, statements

of the eye-witnesses and the post mortem report in particular, in my opinion, the present applicant is entitled to be released on bail.

4. The applicant is directed to be enlarged on bail on his furnishing a personal bond of Rs.10,000/- with one or two sureties of the like amount to the satisfaction of the trial Court subject to the condition that he shall report the concerned police station on every Saturday between 10 am and 12 noon until the conclusion of his trial.

. While allowing this application, I shall not be understood to have expressed any opinion on merits of the case. The Sessions Court shall decide the case uninfluenced by the observations made in this order.

(D.B.Bhosale, J.)